1944 **File No.** European Vagrancy II/44

Legal Department

B **BRANCH**

Subject:- Rules and Notifications under the European Vagrancy Act, 1874

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Gen. 194 a.

389-B

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Para 6 of N.D. note at page 42:- Government Notification, Judicial Department, dated 12th December 1870 was issued under section 27 of the old European Vagrancy Act, 1869 (XXI of 1869). This Act of 1869 was repealed by section 2 of the Present European Vagrancy Act, 1874 (IX of 1874). Para 2 of this section 2 provided that all appointments and orders made under the repealed Act shall be deemed to have been made under the new Act. Section 2 of the European Vagrancy Act, 1874 was repealed by the Repealing Act of 1938 (I of 1938), section 2 and part 1 of the Schedule. Section 3, clause (a), however, of the Repealing Act, 1938, expressly provided that the repeal, of any enactment by that Act, which enactment, while itself repealing another enactment provided that acts done under the enactment by it repealed should be deemed to have been done under the Act by which that enactment was repealed, shall not affect the operation of any such provision. The operation, therefore, of the second paragraph of section 2 of the European Vagrancy Act, 1874, which provided that all appointments made under the old Act of 1869, shall be deemed to have been made under the new Act is not affected by the repeal of section 2 by Act I of 1938. The notification dated 12th December 1870 continues, therefore, to be in force as if made under the new Act of 1874.

Section 27 of the European Vagrancy Act, 1874, was the same as section 27 of the Act of 1869. The Adaptation Order, however, substituted a new section 27 in the European Vagrancy Act, 1874 which provides that all prosecution under the Act other than prosecutions under section 22, may be instituted and conducted by such officers as the appropriate Government appoints and that all prosecutions under section 22 may be instituted and

conducted by such officer as the Central Government appoints in that behalf. The provision contained in new section 27 is thus inconsistent with the old section 27. This however makes no difference to the validity and continued operation of Government Notification, Judicial, dated 12th December 1870, owing to the specific provision in this regard contained in clause 9 of the Government of India (Adaptation of Indian Laws) Order 1937. In other words the appointment made by Government Notification Judicial dated 12th December 1870, continues to operate as an appointment made by the Central Government as respects prosecutions under section 22 and by the Provincial Government as respec or prosecution. It is not necessary to issue a fresh notification.

2. Para 9 of H.D. Note page 43:- In the 1931 Provincial rules (Notification, Home Department No. 5790/2 dated 14th December 1931) there are rules which correspond to the rules which the Central Government now wishes Provincial Governments to make. That group of the Provincial rules is still operative; but there are also rules in the 1931 Provincial rules which correspond to rules in Part I of the 1943 Central rules, that is, to rules which now can be made only by the Central Government. This group of rules is therefore no longer operative and it is desirable to annul it. The simplest course is to annul all the 1931 Provincial rules and make new rules corresponding to Part II of the 1943 rules. That course raises a question whether it is the Central Government or the Provincial Government that should annul. These rules which are within the sphere of the Provincial Government can clearly be annulled by this Government and since the other rules are no longer operative there would be no objection to this Government's annulling the whole set of the 1931 rules.

Id/- R.S. HALIDAY,
For Remembrancer of Legal Affairs.

U.R. tl H.D. No. 3827 dated the 27th May 1944. EVI. 5/7.

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A revised draft notification in place of the draft notification at pages 51-52 ante is sent herewith.

2. H.D. draft rule 4 at page 51 ante is not in order. Under that rule a vagrant is entitled under section 8 to a subsistence allowance from the date on which he signs the agreement under section 17 until his embarkation. But under section 8 there is no provision made entitling a vagrant to a subsistence allowance from the date he signs the agrrement under section 17 until his embarkation. As pointed out by the Government of India in their Explanatory Memorandum on rule XII at page 12 ante a subsistence allowance becomes a Central Liability when removal of a vagrant has been decided upon. The Government of India have fixed this stage as commencing from the time of the signing of the agreement under section 17 of the Act. There is therefore no question of the Provincial Government bearing the liability to pay subsistence allowance from the time of the signing of the agreement under section 17 of the Act. H.D. draft rule 4 has therefore been revised so as to cut out reference to the date on which a vagrant signs the agreement under section 17. The revised rule 4 follows rule 14 of the European Vagrancy (Central) Rules, 1943 (pp. 31-32 ante).

3. The draft notifications at pages 53-57 ante, as amended, are in order.

4. The view taken in para. 4 of H.D.'s note pages 49-50 is correct. The rules which require to be annulled are those contained in Appendix 'C' to Home Department Notification No. 5790/2, dated the 14th December 1931 of H.D. file 5790/2-I.

Id/- P.N.M.
28/8/44.
Remembrancer of Legal Affairs.